

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)
425 Third Street, S.W., Suite 800)
Washington, DC 20024,)
)
Plaintiff,)
) Civil Action No.
v.)
)
U.S. DEPARTMENT OF JUSTICE,)
950 Pennsylvania Avenue, N.W.)
Washington, DC 20530-0001,)
)
Defendant.)
_____)

COMPLAINT

Plaintiff Judicial Watch, Inc. (“Plaintiff”) brings this action against the U.S. Department of Justice (“Defendant” or “DOJ”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552. As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Judicial Watch, Inc. is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street SW, Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. As part of its mission, Plaintiff regularly requests records from federal agencies pursuant to the Freedom of Information Act

(“FOIA”). Plaintiff analyzes the responses and disseminates its findings and the requested records to the American public to inform them about “what their government is up to.”

4. Defendant is an agency of the United States Government. Defendant has possession, custody, and control of records to which Plaintiff seeks access. Defendant is headquartered at 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001.

STATEMENT OF FACTS

5. This lawsuit arises out of two FOIA requests Plaintiff submitted to the DOJ and the Federal Bureau of Investigation (“FBI”), a component of the DOJ.

6. On July 20, 2018, Plaintiff submitted a FOIA request to the FBI, via certified mail, seeking access to the following records:

All records of communication between FBI official Peter Strzok and, Bruce Ohr, in either his role as Associate Deputy Attorney General or Director of the Organized Crime Drug Enforcement Task Force, including but not limited to emails (whether on .gov or non-.gov email accounts, and whether using their real names or aliases), text messages, encrypted app messages and/or instant chats.

The time frame for the requested records is January 2016 to the present.

7. By letter dated August 6, 2018, the FBI acknowledged receipt of Plaintiff’s request and advised Plaintiff that the request had been assigned FOIPA Request No. 1412725-000. Plaintiff has not received any other communications from the FBI in response to Plaintiff’s request.

8. Also on July 20, 2018, Plaintiff submitted a FOIA request to the DOJ, via certified mail, seeking access to the following records:

All records of communication between Bruce Ohr, in either his role as Associate Deputy Attorney General or Director of the Organized Crime Drug Enforcement Task Force, and FBI official Peter Strzok, including but not limited to emails (whether on .gov or non-.gov email accounts, and whether using their real

names or aliases), text messages, encrypted app messages and/or instant chats.

The time frame for the requested records is January 2016 to the present.

9. By letter dated August 1, 2018, the DOJ acknowledged receipt of Plaintiff's FOIA request and referred it to three DOJ components – the Executive Office for Organized Crime Drug Enforcement Task Forces (OCDETF), Office of Information Policy (OIP), and the FBI.

10. By letter dated September 13, 2018, the OCDETF reported that it had conducted a search and located no records responsive to Plaintiff's FOIA request.

11. On December 4, 2018, Plaintiff submitted an appeal to the DOJ, via certified mail, challenging the OCDETF's determination that it possessed no records responsive to Plaintiff's FOIA request.

12. On April 3, 2019, via email, the DOJ affirmed the OCDETF's determination.

13. The DOJ did not provide a substantive response from any of the other components (OIP and FBI) of the DOJ. Plaintiff also did not receive responses directly from OIP or FBI.

14. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), the FBI was required to comply with Plaintiff's request twenty (20) working days after its receipt of the request and to notify Plaintiff immediately of its determination, the records thereof, and the right to appeal any adverse determination. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i)(ii), the DOJ was required to comply with Plaintiff's request thirty (30) working days after its receipt of the request and to notify Plaintiff immediately of its determination, the records thereof, and the right to appeal any adverse determination.

15. As of the date of this Complaint, the FBI and the DOJ have failed to: (i) produce the requested records or demonstrate that the requested records are lawfully exempt from

production; (ii) notify Plaintiff of the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings; and/or (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination.

COUNT I

(Violation of FOIA, 5 U.S.C. § 552)

16. Plaintiff realleges paragraphs 1 through 15 as if fully stated herein.
17. Plaintiff is being irreparably harmed by Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with FOIA.
18. To trigger FOIA's administrative exhaustion requirement, the FBI and the DOJ were required to make final determinations on Plaintiff's FOIA requests within the time limit set by FOIA. Accordingly, the FBI's determination was due by September 4, 2018 and the DOJ's determination was due by August 30, 2018. By this date, the FBI and he DOJ were required to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendant intended to produce or withhold and the reasons for any withholdings; and (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

19. Because the FBI and the DOJ failed to make a final determination on Plaintiff's FOIA requests within the time limit set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).¹

¹ The DOJ referred Plaintiff's FOIA request to three components – the Executive Office for Organized Crime Drug Enforcement Task Forces (OCDETF), Office of Information Policy (OIP), and the FBI. Only OCDETF made a final determination, which Plaintiff unsuccessfully appealed. Because the other two components did not respond, OCDETF's determination is not a final determination by the agency, DOJ.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and *Vaughn* indices of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E)(5) and grant Plaintiff such other relief as the Court deems just and proper.

Dated: April 17, 2019

Respectfully submitted,

/s/ Ramona R. Cotca
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